IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.MC.No. 4081 of 2006()

CRIME NO.137/06 OF THE HILL PALACE POLICE STATION.
S.C. NO.436/06 OF THE II ADDITIONAL SESSIONS COURT, ERNAKULAM.

PETITIONER:

P.R.RAJESH, S/O. RAJAPPAN,
AGED 25 YEARS, PULLUKATTU HOUSE,
NADAKKAVU P.O., UDAYAMPEROOR, TRIPUNITHURA.

BY ADV. SRI.S.RAJEEV
SRI.BIJU THOZHUPPADAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
(CRIME NO.137 OF 2006 OF HILL PALACE
POLICE STATION.)

2. CIRCLE INSPECTOR OF POLICE,
TRIPUNITHURA POLICE STATION,
ERNAKULAM.

3. SUB INSPECTOR OF POLICE,
UDAYAMPEROOR POLICE STATION, ERNAKULAM.

4. DIRECTOR GENERAL OF POLICE,
(LAW & ORDER), POLICE HEADQUARTERS,
THIRUVANANTHAPURAM.

5. JAISON, S/O. ANTONY,
CHEMMANAM VEETTIL, UDAYAMPEROOR KARA,
MANKUNNAM VILLAGE, THEKKEVAYALARAMBATHU VEETTIL,
CHEMMATHU KARA, VAIKOM TALUK.

6. SHIBU, S/O. SATHYAN,
KIZHAKKE PURACKAL VEEDU, VADUTHALA JETTY BHAGOM,
ALAKUTTI MATTATHIL BHAGOM, CHERTHALA.

7. SHAHUL HAMEED, S/O. KHADER,
POONJATTUPARAMBU HOUSE, KEERELIMULA BHAGOM,
ATHANI KARA, KAKKANAD.

BY D.G.P. SRI. P.G. THAMPI.
SRI.DHANESH MATHEW MANJOORAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 4081 OF 2006

Dated this the 6th day of February, 2007

ORDER

The petitioner is the victim/injured in a crime registered, inter alia, under Secs.120B and 302 of the IPC. In this petition, relief of cancellation of bail is claimed only against the 5th respondent i.e., the 1st accused. The police have also filed an application as Crl.M.C.No.15/07 wherein they have also claimed cancellation of bail granted to the 5th accused.

2. The 5th accused has been served. He had entered appearance through counsel who was representing him earlier before the court below. The learned counsel Mr.Dhanesh Mathew Manjooran was personally present before this Court on two earlier occasions. He is not present to be heard today. I have heard the learned counsel for the petitioner as also the learned Public Prosecutor.

3. The respondent is the 1st accused in the instant crime i.e., Crime No.137/06 of the Hill Palace Police Station. He along with the co-accused had allegedly attacked C.W.2 and one Kapil who were present in C.D. Shop of C.W.2 i.e., the

petitioner herein. On account of prior animosity which arose from the role allegedly played by C.W.2's father and C.W.2 in connection with an earlier crime i.e., Crime No.330/03 (Vidyadharan murder case), the respondent/1st accused along with other co-accused had allegedly attacked C.W.2 and the said Kapil. The injured Kapil succumbed to his injuries; whereas the petitioner herein suffered as many as 46 injuries. The alleged incident took place on 6/3/2006. The respondent/1st accused (Jaison by name) was arrested on 29/3/06. He continued in custody till 18/11/06. Investigation was completed. Charge sheet was filed. Cognizance was taken and the case was committed to the Court of Session. The case is pending before the Court of Session as S.C.No.436/06.

4. The II Additional Sessions Judge before whom the case was pending as per the order dated 18/11/06 directed that the respondent/1st accused be also released on bail. The order passed reads as follows:

> "The prosecution has not raised any objection. The accused have been in remand for nearly 8 months. A5, 10 and 11 are released on bail. Hence I find no

> reason to detain these accused also on bail. Hence they are released on bail on execution of bond for Rs.10,000/- with two solvent sureties for like sum on production of solvency certificate."

5. The learned counsel for the petitioner as also the learned Director General of Prosecutions submit that the learned Sessions Judge erred grossly in directing release of the respondent/1st accused. There was no due and proper application of mind by the learned Sessions Judge. The nature of the allegations, the motive, the nature of the role of the respondent/1st accused were all not taken into consideration or discussed by the learned Sessions Judge at all. Merely because some other co-accused were released on bail, the respondent/1st accused who has such shady record of crimes earlier should not have been released at all, urges the learned counsel for the petitioner and the learned Director General of Prosecutions. The learned Director General of Prosecutions further submits that S.C.No.436/06 is now listed for trial and the 1st accused who is now at large is likely to intimidate the witnesses and interfere

with the due course of justice.

6. It is submitted that the 1st accused has not been appearing before the court after his release on bail as per order dated 18/11/06. That he has jumped bail may itself be reckoned as sufficient subsequent circumstance in the facts and circumstances of this case to cancel bail granted to the 1st accused. The learned counsel for the petitioner submits that even if that conduct were not taken into account, the bail granted to the 1st accused is liable to be cancelled for the reason that the order granting bail extracted above was passed by the learned Sessions Judge without due and proper application of mind.

7. I have considered all the relevant inputs. Suffice it to say that I am satisfied, in the facts and circumstances of this case, that going by the antecedents of the petitioner, the nature and severity of the offences committed as also the subsequent conduct of his of absconding after he was released on bail, the bail granted to the petitioner is liable to be cancelled.

8. In the result, this petition is allowed in part. The only relief claimed in this petition now is the cancellation of bail of the 1st accused. The said relief is granted. The police shall make

every endeavour to immediately arrest the 1st accused. His application for bail hereafter in this case shall be considered and entertained hereafter only by this Court.

9. Issue a photocopy of this order to the learned Sessions Judge forthwith.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge